

REMARKS

By the present Amendment, claims 15 and 25 are amended. This leaves claims 15-35 pending in the application, with claims 15 and 25 being independent.

Applicants again request withdrawal of the finality of the October 28, 2008 Office Action as being premature. In reply to the December 22, 2008 response, the Advisory Action merely states that the Examiner disagrees without any reasons to support the disagreement. Since the new ground of rejection involves subject matter that was recited in an original claim and included in the new independent claim, such new ground of rejection could not have been necessitated by the Amendment filed prior to the final rejection. If such rejection is proper, it could and should have been raised against original claim 6.

Despite the foregoing, this Amendment submits changes to independent claims 15 and 25 to address the specific 35 U.S.C. §112 rejection. Since the pending claims are otherwise considered to be allowable over the cited patents, this Amendment at least places the application in better form for allowance or appeal, and thus, should be entered and considered on its merits. Particularly, the modification to claim 15 merely moves the last three lines as previously presented to a position after line 8. The change claim 25 involves a similar modification to emphasize that the microwave pulses are absorbed without forming a plasma prior to the ignition.

In interpreting the claims, particularly claim 15, the method steps are treated as being necessarily in the order presented. That is, the preventing step is subsequent to the igniting step. However, such treatment of method claims is incorrect, as a matter of law, unless it is clear that the order presented is to be a limitation in the claimed process, for example, by such prefixes as

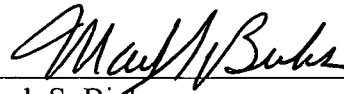
“first”, “second”, “followed by”, etc. No such indication is contained in prior or present claim 15. Additionally, the last three lines of the previously presented claim 15 clearly modify the injecting step, and thus, must be before the igniting step, even if it is considered to be in the order presented. In other words, the preventing step limits the injecting step.

In the Advisory Action, the Examiner appears to indicate that the critical issue is that “the chronological order of steps is not supported by the specification.” Such order in the claims has now been corrected, and/or the interpreted order is improper as being based on an incorrect legal theory. As clearly stated in Altiris, Inc. v. Symantec Corporation, 318 F. 3d 1363, 65 USPQ 2d 1865 (Fed. Cir. 2003), unless method steps in a claim are recited as being in an order, the steps are not ordinarily construed to require one. Here, neither the claim nor the specification directly or implicitly require a narrow construction of the claims where the preventing step occurs after the igniting step. In fact, reason, logic and the specification clearly indicate a different interpretation.

In analyzing a method claim, Interactive Gift Express, Inc. v. CompuServe, Inc., 256 F. 3d 1323, 59 USPQ 2d 1401 (Fed. Cir. 2000), method claim language must be examined to determine if, as a matter of logical grammar, the method steps must be performed in the order written. Here, the preventing step clearly refers to the injecting step to indicate that it further modifies that injecting step and is not to be performed after the igniting step.

In view of the foregoing, both the claims, as presented in this Amendment as well as those presented previously, are believed to be in condition for allowance. Prompt and favorable action is solicited.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark S. Bicks", is written over a horizontal line.

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